right to such immoveable property is in question in the action, and the court or judge may make or refuse such order on such terms as seem just.

(2) The order, if made, shall sufficiently describe the property affected, and shall state the period not exceeding twelve months, during which the order shall be in force as a *lis pendens*."

and Order 47 rule 22 provided for the registration of the *lis pendens* order under the Registration of Deeds Ordinance.

Section 18 of the Supreme Court of Judicature Act (which came into force on the 9th January, 1970, and hereafter referred to as the Act) sets out the powers of the High Court and it reads:

"(1) The High Court shall have all such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of sub-section (1) of this section the High Court shall have the powers set out in the First Schedule to the Act:

Provided that all such powers shall be exercised in accordance with any written law or Rules of court relating to them."

By paragraph 6 of the First Schedule of the Act the High Court is given the —

"Power to provide for the interim preservation of property the subject matter of any cause or matter by sale or by injunction or the appointing of a receiver or the registration of a *caveat* or a *lis pendens* or in any other manner whatsoever."

The Rules of the Supreme Court, 1970, came into force on the 2nd January, 1971. Provisions were made in Order 29 for "Interlocutory Injunction, Interim Preservation of Property, Etc." of the subject matter of a cause or matter but there is no specific provision for the making of a *lis pendens* order. By Order 93 the Rules of the Supreme Court, 1934, were repealed.

It is argued before us that since the Rules of the Supreme Court, 1934, were repealed and the Rules of the Supreme Court, 1970, do not expressly specify the forms and methods of procedure for applying for a *lis pendens* order and there is no provision for such an order to be registered under the Registration of Deeds Act the High Court has no jurisdiction to make a *lis pendens* order.

We are unable to accept that argument. To accept that argument would be to contradict the express provision contained in section 18(2) of the Act which is an express enactment that the High Court shall have the power to make a *lis pendens* order.

It is also our view that since the 1970 Rules do not specify the forms and methods of procedure for an application for a *lis pendens* order then section 82(2) of the Act is applicable and the relevant forms and methods of procedure as provided for in Order 47 of the 1934 Rules may be used as they are not inconsistent with the provisions of the Act or with the 1970 Rules.

Section 82(2) provides:

"(2) Subject to the provisions of this Act and Rules of court, all forms and methods of procedure and practice which, under any written law, order rules or custom whatsoever, were formerly in force in the High Court or the Federal Court in Singapore and which are not inconsistent with the provisions of this Act or with Rules of Court, may continue to be used in the Supreme Court in the like cases and for the like purposes as those in and for which they would have been applicable in the former respective courts."

For these reasons we would allow the appeal with costs.

Appeal allowed.

Solicitors: *Ng & Ng; L. A. J. Smith.*

TAI TONG REALTY CO. (PTE) LTD. v. GALSTAUN & ANOR.

[O.C.J. (Choor Singh J.) June 21, 1973]

[Singapore — Motion in Suit No. 653 of 1973]

Contract — Sale of land — Sale "subject to contract" — No agreement until formal contract is signed.

The defendants had given an option to the plaintiffs to purchase a piece of land and house thereon "subject to contract". The plaintiffs exercised the option by letter and requested for the title deeds and draft contract but the defendants returned the letter and deposit. The plaintiffs thereupon brought an action to enforce the agreement and subsequently applied for an injunction to prevent the defendants from selling the property until judgment in the action.

Held: as the sale was clearly subject to contract and as no formal contract had been signed by the parties there was no binding agreement between them, and the plaintiffs were therefore not entitled to the injunction which they sought.

Case referred to:

(1) *Spottiswoode Ballantyne & Co. Ltd.* v. *Doreen Appliances Ltd. & G. Barclay (London) Ltd.* [1942] 2 All E.R. 65.

MOTION.

K. A. O'Connor for the plaintiffs.

K. E. Hilborne for the defendants.

Choor Singh J.: The question to be answered on this motion is short and simple and it is this: what is the meaning and effect of the expression "subject to contract" which appears in an option granted by the defendants to the plaintiffs to purchase their property at 27 Tomlinson Road, Singapore.

The facts which have given rise to this question are not in dispute. On the 31st July 1972 the defendants gave a written option to the plaintiffs in the following terms: —

"In consideration of the sum of Singapore $2,000 received by us from you this day we hereby give you an option to purchase our property known as 27 Tomlinson Road, Singapore 10 containing an area of 45,843 sq. ft. at the price of Singapore $16.75 (Singapore dollars sixteen and seventy five cents) per sq. ft. on the following terms and conditions:—

1. The sale is subject to contract.
2. The property is to be sold with vacant possession to be given within three months from the date of contract for Sale and Purchase.
3. The sum equivalent to 10% of the purchase price must be paid to our solicitors, Messrs. Advani & Hoo of 7E-1, Asia Building, Singapore 1, on the exercise of this option.
4. The contract for the Sale and Purchase shall be executed within six weeks of the date of exercise of this option.

5. On the signing of the agreement for Sale and Purchase a further 10% of the purchase price of the property will be paid by a bank cheque made out in favour of Mr. & Mrs. A. C. Galstaun. Further, the buyers will authorise Messrs. Advani & Hoo to pay us the original 10% paid to them on taking up of the option. The remaining 80% of the purchase price of the property shall be paid by a bank cheque to Mr. & Mrs. A. C. Galstaun on their giving vacant possession to the buyers.

6. The sale of the property does not include our furniture and fittings and goods on the premises. That is, the sale is only of the land and buildings on it.

7. It is distinctly understood that any portion of the property intended to be requisitioned by the Government before this date, now or in the future will be for your account and responsibility, that is, irrespective of the past, present or future intentions or plans of the Government in respect of this property, you will pay us the sum of S$767,870.25 (Singapore dollars seven hundred and sixty seven thousand, eight hundred and seventy five and and twenty five cents) on the signing of the contract for Sale and Purchase.

8. The S$2,000 deposit is non-refundable in case the sale of the property does not go through.

This offer shall expire at noon of the 31st January 1973."

On 19th January 1973 the plaintiffs exercised the option through their solicitors Messrs. Yap & Yap who wrote to the defendants' solicitors as follows: —

"We act for M/s. Tai Tong Realty Co. (Pte) Ltd. of No. 29 Carpenter Street, Singapore 1.

We are instructed to and do hereby exercise the option dated 31st July 1972 given by your clients, Mr. A. C. Galstaun and Mrs. S. Galstaun to our clients to purchase the abovementioned property. In accordance with the terms of the option, we forward herewith our clients' cheque for the sum of $76,787.02 being the 10% of the purchase price drawn payable to you. Please let us have your official receipt.

We also enclose herewith a xerox copy of the option for your reference.

Please send us the title deeds and your draft contract as soon as possible."

Nothing happened after this until the 26th February 1973 when the defendants' new solicitors M/s. Hilborne & Co. wrote to the plaintiffs' solicitors M/s. Yap & Yap as follows: —

"We are now acting for Mr. and Mrs. A. C. Galstaun in place of Messrs. Advani & Hoo, and we refer you to your letter of the 19th of January to them enclosing a cheque for $76,787.02. We now return this cheque, receipt of which kindly acknowledge since our clients do not intend to proceed with the matter."

There was some further correspondence between the solicitors of the parties and eventually on the 2nd April 1973 the plaintiffs issued their writ in these proceedings claiming that there was a binding agreement between the parties for the sale to the plaintiffs of No. 27 Tomlinson Road; that the defendants had repudiated the said agreement and that the defendants should be ordered to proceed with the said sale. On the 28th April 1973 the plaintiffs filed this motion for an order that the defendants be restrained by injunction until judgment in this action from selling the property which is the subject of the dispute.

Counsel for the defendants submitted that the plaintiffs were not entitled to an injunction because there was no binding contract between the parties for the sale of the property in question. He submitted that the terms of the option granted to the plaintiffs were very precise and clear; that one of the conditions clearly spelt out was that the sale was "subject to contract"; and that as no formal contract has been signed between the parties there is no binding agreement for the sale of the property to the plaintiffs. Counsel relied on the decision of the Court of Appeal in *Spottiswoode Ballantyne & Co. Ltd.* v. *Doreen Appliances Ltd. & G. Barclay (London) Ltd.*,[1] and in particular on the following passage in the judgment of Lord Greene M.R. at page 66: —

"The real fact of the matter is that the language used here is equivalent to the common and more concise phrase 'subject to contract' and, if anything is settled, it is that that phrase is one which makes it clear that the intention of the parties is that neither of them is to be contractually bound until a contract is signed in the usual way."

Counsel for the plaintiffs, in reply, submitted that it was really a question of construction and the answer depended on whether the parties intended to be bound by the option and its acceptance subject to a mere formal contract. He submitted that in this case the parties clearly intended to be bound; that although no subsequent formal contract was signed, there was nevertheless a binding agreement for the sale of the property to his clients and that the defendants were not entitled to repudiate it. Counsel submitted that the plaintiffs were therefore entitled to the injunction which they were seeking and he cited a number of authorities in support of his submission that on the facts there was a binding agreement.

In my opinion the authorities cited by counsel for the plaintiffs are of no help to the plaintiffs. Those cases were decided on their own particular facts. The expression "subject to contract" is too well known and is so much in current use that its meaning and effect are settled beyond argument. It means that until a proper formal contract is signed between the parties either party is free to withdraw. Accordingly where the owner of property gives an option making it a condition of the option that the sale is "subject to contract", there is no binding agreement between the parties unless and until a subsequent proper formal contract is signed between them. In this case no such formal contract has been signed between the parties and the plaintiffs were therefore not entitled to the injunction which they sought. For these reasons their application was dismissed with costs.

Application dismissed.

Solicitors: *Drew & Napier: Hilborne & Co.*